

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 625 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DEVISINH PURANSINH RAJPUROHIT

Versus

YUSUFBHAI GAFURBHAI

Appearance:

MR MB GANDHI for Petitioner
NOTICE UNSERVED for Respondent No. 1
MR AJAY R MEHTA for Respondent No. 3

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 28/06/1999

ORAL JUDGEMENT

The appellant, who is the original claimant in Motor Accident Claim Petition No.12 of 1987, has filed this Appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and award dated November 21, 1996 of the Motor Accidents Claims Tribunal (Aux.), Ahmedabad.

2. On May 3, 1986, the appellant was driving Scooter bearing No.GRL 441 and was proceeding in the direction of Delhi Gate. From the opposite direction, the respondent No.1, who was driving Motor Car bearing No.GJD 7236 came in rash and negligent manner and on wrong side, dashed with the scooter of the applicant. The applicant fell down from the scooter and sustained fractures on his right leg. The applicant was removed to the V.S. Hospital where operation was performed on his right leg and iron rod was inserted. The applicant had remained as an indoor patient in the V.S. Hospital for 15 days. It is averred by the applicant in his application that after the discharge from the hospital, the applicant had to visit the hospital for physiotherapy and follow-up treatment. At the time of the accident, the appellant was earning Rs.3500/- per month as a delivery contractor with M/s.Mihir Textiles. The applicant averred that he could not attend his business for four months due to the accidental injuries. The applicant, therefore, filed M.A.C. Petition No.12 of 1987 claiming compensation of Rs.70,000/- for the injuries sustained in the vehicular accident which occurred on May 3, 1986.

3. The respondents No.1 and 2 filed their written reply at Exh.14 and contended that the driver of the Motor Car was not negligent in driving the car and the accident had taken place due to negligence on the part of the scooter driver. The respondent No.3 filed its reply at Exh.33, inter-alia, contending that there was breach of conditions of insurance policy and the Insurance Company was not liable to pay as claimed by the applicant. It was denied that the monthly income of the applicant was Rs.4000/-.

4. On the pleadings of the parties, the Tribunal framed necessary issues at Exh.78. The Tribunal on overall appreciation of oral as well as documentary evidence, concluded that the accident had taken place due to sole negligence of the driver of the Motor Car No.GJD 7236. The Tribunal awarded compensation to the appellant as under:

Rs.21,600 : Future loss of income
Rs.10,000 : Shock, pain and sufferings
Rs. 8,400 : Expenses for medicines and
special diet
Rs. 5,000 : Actual loss of income
Rs. 2,000 : Transportation charges.

Thus, the Tribunal awarded an amount of Rs.47,000/- with 12% interest to be received from the respondent with proportionate costs which has been challenged by the appellant claiming enhancement of compensation by filing this appeal.

5. I have heard the learned Advocates for the parties. Looking to the period of treatment undergone and the nature of injuries, in my opinion, the Tribunal ought to have awarded an amount of Rs.15,000/- under the head of pain, shock and sufferings. Therefore, the amount of Rs.10,000/- awarded by the Tribunal is substituted in place of the amount of Rs.15,000/- to be received under the head of pain, shock, sufferings. The Tribunal had awarded Rs.5000/- under the head of actual loss of income. The appellant had remained as indoor patient for 15 days and thereafter, he could not attend his business for 2 to 3 months. Bearing in mind this fact and circumstance, in my opinion, the appellant should have been awarded Rs.6000/- under the head of actual loss of income. Therefore, the amount of Rs.5000/awarded by the Tribunal under this head is enhanced to Rs.6000/- under the head of actual loss of income.

6. Learned Advocate for the appellant submitted that the amount of Rs.8400/- awarded by the Tribunal under the head of expenses on medicine and special diet, is grossly inadequate because the appellant had produced bills of medicine for a sum of Rs.5200/-.

7. It is contended that the applicant could not preserve all the bills. Looking to the injuries sustained by the appellant and the operations performed on the right leg of the appellant, in my opinion, amount of Rs.12000/- would be just and proper under the head of expenses on medicines and special diet. In view of the aforesaid discussion, the appellant would be entitled to receive compensation from the respondent as under:

Rs.	21,000	:	Future economic loss
Rs.	15,000	:	Pain, shock and sufferings
Rs.	12,000	:	Expenses on medicine and Special diet
Rs.	6,000	:	Actual loss of income
Rs.	2,000	:	Transportation charges

Rs.	56,600		

- Rs. 47,000

Rs. 09,600

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8. As a result of the foregoing discussion, this appeal is partly allowed with proportionate costs. The appellant would be entitled to receive additional compensation of Rs. 9,600/- from the respondent with 12% interest from the date of application till realization with proportionate cost. Decree be drawn in terms of this judgment. The liability to pay interest by the Insurance Company i.e. the respondent No.3 would be from 15.9.1995 as per the award of the tribunal.

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msh.